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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/676,946	09/30/2003	Kristin L. Jambor	END5083-515149	7866
26874	7590	07/27/2007		
FROST BROWN TODD, LLC 2200 PNC CENTER 201 E. FIFTH STREET CINCINNATI, OH 45202			EXAMINER COMSTOCK, DAVID C	
			ART UNIT 3733	PAPER NUMBER
			NOTIFICATION DATE 07/27/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/676,946

Applicant(s)

JAMBOR ET AL.

Examiner

David Comstock

Art Unit

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-5 and 7-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-5 and 7-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>8/15/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

Applicant's amendment filed 11 July 2007 has been considered, but upon further consideration a new rejection of the claims has been made. Accordingly, both the indicated allowability of the subject matter of previous claims 6 and 7 (subject to being rewritten in independent form, etc.) and the finality of the last action are withdrawn. The new ground of rejection is set forth below.

Oath/Declaration

The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not properly state that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in 37 CFR 1.56.

Specifically, the language of the declaration should read: "I acknowledge the duty to disclose information which is material to patentability of this application in accordance with Title 37, Code of Federal Regulations Section 1.56." (It should not read "material to the examination of this application..." or "1.56(a)", etc.)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-5, 7-9, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,157,713 to Clarey.

Clarey discloses a band comprising a tension carrying belt (10) and a balloon (24) attached to the tension carrying belt. The balloon comprises a plurality of partitions (22) defining a plurality of inner chambers (26). A fluid supply tube (50,52) is in fluid communication with the balloon and attached to the tension carrying belt. The fluid supply tube further comprises a plurality of inlets wherein each of the plurality of inlets is in fluid communication with a corresponding one of the plurality of inner chambers of the balloon and the fluid supply tube inlets at each end of the partition. A plurality of check valves is located within the plurality of inlets (Column 3, lines 30-42). The valves are considered to be check valves since they prevent backflow of air out of the device and allow movement of air in and out when it is required. The tension carrying belt further comprises a latching mechanism (34, 36). The compartments (26) may also be interpreted as a plurality of balloons. In addition the partitions (22), may also be interpreted as reinforcing structure. Regarding the preamble "gastric", it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to

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be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Clarey discloses the claimed invention except for explicitly disclosing the limitations pertaining to the size of the inlets.

However, it would have been obvious to have formed the inlets of an appropriate size since it has been held to be within the level of ordinary skill in the art to determine size.

In re Rose, 105 USPQ 237 (CCPA 1955).

Claims 1 and 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over PG-PUB 2005/0192531 to Birk.

Birk discloses a gastric band comprising a tension carrying belt(10) and a balloon attached to the tension carrying belt (6). The balloon comprises a plurality of partitions defining a plurality of inner chambers (FIG. 4). A fluid supply tube is in fluid communication with the balloon and is attached to the tension carrying belt (paragraph 0030). A latching mechanism comprises one or more sutures (paragraph 0006). The device has a length between 8 and 15 cm (paragraph 0008). The portioned balloon can also be considered a plurality of balloons. The plurality of balloons is attached to the tension carrying belt (FIG. 4). The fluid supply tube comprises a plurality of inlets (paragraph 0006) that are attached to the tension carrying belt such that they provide fluid communication between each of the plurality of balloons and the fluid supply tube (paragraph 0006). The balloons have an interior surface and further comprise one or more reinforced sections (7) disposed along the length of the interior surface of the balloon (paragraph 0033). Birk discloses the claimed invention except for explicitly disclosing the limitations pertaining to the size of the inlets. However, it would have

been obvious to have formed the inlets of an appropriate size since it has been held to be within the level of ordinary skill in the art to determine size. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Comstock whose telephone number is (571) 272-4710. Please leave a detailed voice message if examiner is unavailable. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached at (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



D. Comstock



EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER